

ORIGINAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BANK OF THE WEST, as assignee of
GANIS CORPORATION,

Plaintiff,

-against-

M/V NEVER SAY NEVER, her engines,
tackle, apparel, appurtenances, etc.,
having Official No. 587514 and Hull Serial
No. 47304m77, *in rem*; and SANTO
SILLARO, *in personam*,

MEMORANDUM AND ORDER
Case No. CV-05-6004 (FB) (SMG)

Defendants.

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Appearances

For the Plaintiff:

STEVEN C. TAITZ, ESQ.
Roe Wallace Esteve Taroff & Taitz LLP
Post Office Box
Patchogue, NY 11772

For the Defendants:

JACK A. GREENBAUM, ESQ.
Blank Rome LLP
405 Lexington Avenue
New York, NY 10174

BLOCK, Senior District Judge:

On September 27, 2007, the Court issued a Memorandum and Order holding that defendant Santo Sillaro ("Sillaro") had defaulted on a note held by plaintiff, Bank of the West ("the Bank"), and secured by a mortgage on defendant *in rem* M/V Never Say Never. The matter was referred to the assigned magistrate judge for a determination of the total amount due.

On July 22, 2008, Magistrate Judge Gold issued a report and recommendation ("R&R") recommending that the Bank be awarded a total of \$103,010.22, plus \$23.59 per day between July 11, 2008, and the entry of judgment. The R&R recited that "[a]ny objections

to the recommendations made in this Report must be filed within ten days . . . and, in any event, on or before August 5, 2008," and that "[f]ailure to file timely objections may waive the right to appeal the District Court's order." R&R at 8. A copy of the R&R was sent electronically to counsel for all parties on July 22, 2008; to date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

Since there is nothing in Magistrate Judge Gold's thorough R&R that suggests plain error, the Court adopts it without *de novo* review.

SO ORDERED.

s/Hon. Frederic Block


FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
September 4, 2008